

## REMARKS

Claims 1, 3-22, and 25-34 are pending in the application (hereinafter, "Application"). Claims 1, 3-22, and 25-34 currently stand rejected. Claim 1 is amended herein. Claims 2, 23, and 24 were previously canceled. The Applicant respectfully requests consideration of the following remarks and allowance of the claims.

### 35 U.S.C. § 101 Rejection

Claims 1-20 stand rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter. The body of claim 1 has been amended herein to overcome the rejection. The remaining claims depend from claim 1. Therefore, in light of the above, the Applicant respectfully requests withdrawal of the 35 U.S.C. § 101 rejection of claims 1-20.

### 35 U.S.C. § 103 Rejection

Claims 1, 3-14, 16, 19-22, 26-31, and 33-34 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,111,391 (Fields) in view of U.S. Patent Application Publication No. 2002/0143597 A1 (Andre) further in view of a public use of Click2Staff software, as evidenced by *Employee Scheduling Becomes More Complex*, Credit Union Times, March 13, 2002, p. 1-4 (hereinafter Employee Scheduling); Berkofsky, *Banks to Start Embracing Workforce Technology*, Bank Systems & Technology, 2002, p. 1-3 (hereinafter Berkofsky); Norton-Miller, *GECU Saves Money With ASP Staffing Model*, microbanker.com, Feb 2003, p.1-4; *Wells Using Traffic Prediction Software*, American Banker, Sept. 13, 2002, 1 p. (hereinafter Wells); and *Exametric's Click2Staff to Optimize Workforce at First Hawaiian Bank*, exametric.com, Nov. 11, 2002, p. 1-2 (hereinafter Hawaiian Bank). The Applicant respectfully traverses the rejection for at least the following reasons.

In the recent Office action (dated 08/22/2008), the Examiner admits that Fields in view of Andre does not explicitly teach processing past schedules using a pattern recognition procedure to recognize historical shift patterns for a particular position indicated in the past schedules, wherein the historical shift patterns comprise a resource dependent shift pattern, a time dependent shift pattern, and a ratio dependent shift pattern (Office action, p. 6).

However, the Examiner asserts that the Click2Staff software teaches these limitations. The Applicant asserts that, even if the Click2Staff software contained the attributes as discussed

in the Examiner's cited articles, Fields in view of Andre and Click2Staff software fails to teach or suggest every limitation of claim 1.

In particular, the articles fail to attribute a ratio dependent shift pattern to Click2Staff software. The Examiner asserts that a ratio dependent shift pattern is taught in Berkofsky, pg. 1, where the Exametric product detected a shift in customer traffic from afternoon to morning hours. The Examiner then asserts that the Berkofsky reference demonstrates that "Click2Staff software detected that morning hour positions required more resources than afternoon hour positions; thus demonstrating a ratio of greater than 1 between morning and afternoon staffing" (Office action, p. 8). However, in light of the Applicant's specification, a ratio dependent shift pattern requires recognizing that when a certain number of positions of a first type are scheduled, a certain number of a second type of positions are required. "For example, for each position of type I at least four units of position of type II are required" (Application, para. 34). Thus, merely detecting that morning positions required more resources than afternoon hour positions does not teach a ratio dependent shift pattern when read in light of the Applicant's specification.

Moreover, Applicant's representative, Stephen S. Roche (Reg. No. 52,176), recently spoke with Mr. Jeffery Cameron, one of the inventors in the subject application, who confirmed that the Click2Staff software referenced in the recent Office action was a version that did not include the claimed subject matter of the present application.

Based on the above comments, neither Fields nor Andre nor Click2Staff software – separately or in combination – teach or suggest all of the limitations of independent claim 1. Claim 1 is therefore allowable over the art of record and such indication by the Examiner is respectfully requested.

Independent claim 21 contains limitations similar to those of claim 1 and is therefore allowable over Fields in view of Andre and Click2Staff software for at least the same reasons as discussed above for claim 1. Dependent claims 3-14, 16, 19, 20, 22, 26-31, and 33-34, while separately allowable over the art of record, depend from otherwise allowable independent claims. The Applicant therefore refrains from further discussion of the dependent claims for the sake of brevity.

Claims 15, 17, and 32 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Fields in view of Andre and further in view of a public use of Click2Staff software, further in view of a public use of GMT Planet software, as evidenced by gmtcorp.com, GMTPlanet, 2001,

retrieved from web.archive.org, <http://web.archive.org/web/20010415113036/www.gmtcorp.com> (GMTcorp.com). Claims 15 and 17 depend from independent claim 1 and claim 32 depends from independent claim 21, thus incorporating the provisions of their associated independent claims. Thus, the Applicant respectfully contends that claims 15, 17, and 32 are allowable for at least the reasons presented above in support of claims 1 and 21, and such indication by the Examiner is respectfully requested.

Claim 18 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Fields in view of Andre and further in view of a public use of Click2Staff software, further in view of U.S. Patent No. 6,823,315 B1 (Bucci). Claim 18 depends from independent claim 1, thus incorporating the provisions of independent claim 1. Thus, the Applicant respectfully contends that claim 18 is allowable for at least the reasons presented above in support of claim 1, and such indication by the Examiner is respectfully requested.

Claim 25 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Fields in view of Andre and further in view of a public use of Click2Staff software, further in view of U.S. Patent No. 7,222,082 B1 (Adhikari). Claim 25 depends from independent claim 21, thus incorporating the provisions of independent claim 21. Thus, the Applicant respectfully contends that claim 25 is allowable for at least the reasons presented above in support of claim 21, and such indication by the Examiner is respectfully requested.

Therefore, in light of the above, the Applicant respectfully requests withdrawal of the 35 U.S.C. § 103(a) rejections of claims 1, 3-22, and 25-34.

### **37 C.F.R. § 1.105 Requirement for Information**

The Examiner has requested additional information to identify products and services embodying the disclosed subject matter of automatic staff scheduling based on shift patterns and to identify the properties of similar products and services found in the prior art. In particular, the Examiner has requested additional information regarding the issue of whether the Assignee's Click2Staff product possessed the functionality of automatic staff scheduling based on shift patterns more than one year before the instant application was filed.

Applicant's representative, Stephen S. Roche (Reg. No. 52,176), recently spoke with Mr. Jeffery Cameron, one of the inventors in the subject application, in order to address the

Requirement for Information made in the recent Office action. According to Mr. Roche, Mr. Cameron stated that the Click2Staff software referenced in the recent Office action was a version that did not include the claimed subject matter of the present application.

The Applicant will now address the five subsections enumerated by the Examiner in the Requirement for Information.

(1) In view of the statement from Mr. Cameron above, the information requested in subsection (1) of the Examiner's Requirement for Information is unknown or cannot be readily obtained.

(2) In view of the statement from Mr. Cameron above, the information requested in subsection (2) of the Examiner's Requirement for Information is unknown or cannot be readily obtained.

(3) In view of the statement from Mr. Cameron above, the information requested in subsection (3) of the Examiner's Requirement for Information is unknown or cannot be readily obtained.

(4) In view of the statement from Mr. Cameron above, the information requested in subsection (4) of the Examiner's Requirement for Information is unknown or cannot be readily obtained.

(5) The specific improvements of the claimed subject matter over the disclosed prior art comprise processing past schedules using a pattern recognition procedure to recognize historical shift patterns for a particular position indicated in the past schedules, wherein the historical shift patterns comprise a resource dependent shift pattern, a time dependent shift pattern, and a ratio dependent shift pattern.

## CONCLUSION

Based on the above remarks, the Applicant submits that the claims in their present form are allowable over the art of record. Additional reasons in support of patentability exist, but such reasons are omitted in the interests of clarity and brevity. The Applicant respectfully requests allowance of the claims at the Examiner's earliest convenience.

Included herewith is payment for the appropriate fee under 37 C.F.R. § 1.17(a)(1) for a one-month extension of time (37 C.F.R. § 1.136(a)). The Applicant believes no additional fees are due with respect to this filing. However, should the Office determine that additional fees are necessary, the Office is hereby requested to contact the undersigned to arrange for payment of the applicable fees.

Respectfully submitted,

/Eric M. Collins/

**SIGNATURE OF PRACTITIONER**

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